

Donna J. McCready  
Ashburn & Mason, P.C.  
1130 West 6<sup>th</sup> Avenue, Suite 100  
Anchorage, Alaska 99501  
(907) 276-4331 / phone  
(907) 277-8235 / fax

Attorney for Kimberly Allen

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

KIMBERLY ALLEN, Personal	)	
Representative of the ESTATE OF TODD	)	
ALLEN, Individually, on Behalf of the	)	
ESTATE OF TODD ALLEN, and on	)	
Behalf of the Minor Child PRESLEY	)	
GRACE ALLEN,	)	
	)	Case No.: 3:04-CV-0131-JKS
Plaintiffs,	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

COMES NOW plaintiff, Kimberly Allen, Personal Representative of the Estate of Todd Allen, and for her cause of action against the defendant United States of America, states as follows:

**I. Jurisdiction**

1. At all times relevant hereto, Todd Allen was a resident of Valdez in the District of Alaska.

2. Todd Allen died in Anchorage, Alaska on April 19, 2003.

3. Kimberly Allen is the surviving spouse of Todd Allen.

4. Kimberly Allen has been appointed the Personal Representative of the Estate of Todd Allen. Letters of Administration from the Superior Court, Third Judicial District at Anchorage, Alaska, Case no. 3 AN-03-700 PR are attached hereto.

5. This cause of action arises under the Federal Tort Claims Act 28 U.S.C. sec. 1346, 2401, and 2671 et seq.

6. At all times relevant hereto, the Alaska Native Medical Center (ANMC) was an agent of the United States of America.

7. Employees/agents of ANMC were acting as employees/agents of the United States of America at the time of the events described herein.

8. ANMC and its employees/agents were acting in the scope of their agency/employment at the time of the events described herein.

9. More than six months ago, the claims set forth herein were presented to the United States Department of Health and Human Services, Public Health Service. Since that agency has failed to make a final disposition of the claim within that time period, plaintiff deems such failure to be a denial of her claim pursuant to 28 U.S.C. sec. 2675.

10. Based on paragraphs 1-9 above, this court has jurisdiction over the claims asserted herein.

ASHBURN & MASON P.C.  
LAWYERS  
1130 WEST SIXTH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99501-5914  
TEL 907.276.4331 • FAX 907.277.8235

## **II. Facts**

11. On or about April 19, 2003, Todd Allen was evaluated at the ANMC emergency room.

12. Todd Allen told ANMC personnel that he had a very severe headache, which was located in the back of his head and radiated up to the top of his head, nausea, and vomiting.

13. Mr. Allen was examined and then discharged from the ANMC emergency room.

14. Later the same day, Mr. Allen's wife called the ANMC emergency room and reported her husband's symptoms to ANMC employees/agents. Mrs. Allen was not instructed to bring her husband to ANMC nor was she instructed to call 911.

15. Soon thereafter, Mrs. Allen noted that her husband was having periods of apnea. She tried to rouse her him and was unable to do so. At that time, she noted that her husband had spit out blood.

16. Mrs. Allen called 911. Paramedics arrived and attempted to resuscitate Mr. Allen. He was then transported by ambulance to Providence Hospital.

17. At Providence Hospital, a CT scan of Mr. Allen's head showed an extensive subarachnoid hemorrhage. Mr. Allen died shortly thereafter.

## **III. Allegations of Negligence**

18. Plaintiff incorporates the allegations set forth in Paragraphs 1-17.

19. Agents and/or employees of ANMC either lacked the degree to knowledge and skill possessed by health care providers in their field of specialty or

failed to exercise the degree of care ordinarily exercised under the circumstances by health care providers in their field or specialty.

20. The negligent care and conduct of ANMC and its employees and/or agents was a direct and proximate cause of Todd Allen's death.

WHEREFORE plaintiff prays for judgment in her favor and against the defendant U.S.A.

#### **IV. First Cause of Action: Survival Action (AS 09.55.570)**

21. Plaintiff realleges the allegations set forth in Paragraphs 1-20.

22. During the period between Todd Allen's evaluation at ANMC and his death, he suffered severe pain and suffering, emotional distress, and fear of impending death.

23. The harm to Todd Allen was a direct and proximate result of the negligence of employees/agents of the U.S.A.

24. Plaintiff and Personal Representative Kimberly Allen brings her first cause of action for all categories of loss allowed under AS 09.55.570.

#### **V. Second Cause of Action: Wrongful Death (AS 09.55.580)**

25. Plaintiff realleges the allegations set forth in Paragraphs 1-24.

26. Plaintiff brings her second cause of action for all categories of economic and non-economic loss allowed under AS 09.55.580, the Alaska Wrongful Death Act.

ASHBURN & MASON P.C.  
LAWYERS  
1130 WEST SIXTH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99501-5914  
TEL 907.276.4331 • FAX 907.277.8235

**VI. Third Cause of Action: Negligent Infliction of Emotional Distress**

27. Plaintiff reasserts paragraphs 1-26 of this Complaint.

28. As a direct and proximate result of Defendant's negligence, Mrs. Allen saw her husband, Todd Allen, suffer, go into respiratory arrest, and eventually die.

29. Kimberly Allen suffered severe emotional distress as a result of seeing her husband suffer, go into respiratory arrest and die.

WHEREFORE Plaintiff Kimberly Allen in her capacity as Personal Representative of the Estate of Todd Allen prays for relief as follows:

1. Compensation for all categories of damages allowed under AS 09.55.570 and AS 09.55.580 in the total amount stated on Plaintiffs Standard Form 95, dated November 7, 2003;

2. Compensation for emotional distress and any other damages suffered as determined at trial; and

3. All costs and other relief that is just in the premises.

DATED this 15<sup>th</sup> day of March, 2006.

ASHBURN & MASON, P.C.  
Attorneys for Plaintiff

/s/ Donna J. McCready  
1130 West Sixth Avenue, Suite 100  
Anchorage, Alaska 99501  
Phone: (907) 276-4331  
Fax: (907) 277-8235  
E-mail: [djm@anchorlaw.com](mailto:djm@anchorlaw.com)  
Alaska Bar No. 9101003

ASHBURN & MASON P.C.  
LAWYERS  
1130 WEST SIXTH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99501-5914  
TEL 907.276.4331 • FAX 907.277.8235

**CERTIFICATE OF SERVICE**

I hereby certify that on 15<sup>th</sup> day of March, 2006, a copy of the foregoing Amended Complaint was served electronically on:

Gary Guarino  
U.S. Attorney's Office  
222 West 7<sup>th</sup> Avenue, #9 – Room 253  
Anchorage, AK 99513

/s/ Donna J. McCready

P:\Clients\10194\Pleadings\Amended Complaint.doc

ASHBURN & MASON P.C.  
LAWYERS  
1130 WEST SIXTH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99501-5914  
TEL 907.276.4331 • FAX 907.277.8235

AMENDED COMPLAINT

*Allen v. USA*, Case No. 3:04-CV-0131-JKS

Page 6 of 6